

**Memorandum of Understanding between  
Peter C.J. Kelly, Trustee of 509 Woburn Street Realty Trust ("Owner") and  
the Town of Lexington, Massachusetts ("Town")**

**March 10, 2010**

Owner has filed, in conjunction with Peter C.J. Kelly and Richard F. Perry, Trustees of R H Realty Trust u/d/t dated December 28, 1984 and recorded with the Middlesex South Registry of Deeds at Book 15944 at, Page 237, and registered with Middlesex South Registry District of the Land Court as Document No. 673457 and noted on Certificate of Title No. 172588 in Book 933 at Page 38, and Robert W. Murray, Trustee of Three Hundred Thirty Lexington Street Trust u/d/t dated January 21, 2003 and registered with the Middlesex South District Registry of Deeds as Document 1249368 and noted on Certificate of Title No. 226671 in Book 1263 at Page 121, for a zoning amendment to the PSDUP which was previously approved by the Town of Lexington Annual Town Meeting in May 1985 (hereinafter, the "Original PSDUP") for the property located at 425 Woburn Street. This proposed zoning amendment to the Original PSDUP and Definitive Site Development and Use Plan (hereinafter as amended referred to as the "Amended PSDUP") will add Parcels 1A, 1B, 1C, 1D and 2 on Lexington Assessor's Map 53 (the "New Properties") to the existing Planned Residential District Number 5 ("RD 5 District") that was created by the Original PSDUP and Definitive Site Development and Use Plan.

Currently, the RD 5 District is comprised of one lot owned by R H Realty Trust consisting of approximately 9.48 acres (Assessor's Map 53, Parcel 3A). All proposed additional development that may be authorized under the Amended PSDUP will be located on Parcel 2 on Assessor's Map 53 (the "Manor House Property"), which parcel is owned by Owner, and therefore all additional obligations and liabilities hereunder are the sole responsibility of Owner.

The purpose of this Memorandum of Understanding (hereinafter, the "MOU") is for Owner and the Town, acting by and through the Board of Selectmen, to execute a contract setting forth mitigation measures to be completed by Owner if the Amended PSDUP is approved by Annual Town Meeting and the Attorney General of the Commonwealth of Massachusetts.

***I. Measures to be Completed Upon the Issuance of the First Certificate of Occupancy for the Manor House Property***

Prior to the issuance of the first certificate of occupancy for the Manor House Property, Owner shall:

- (a) Contribute \$37,500 to the LEXPRESS transportation fund;
- (b) Complete construction of an on-site bus stop area on the Manor House Property satisfactory to the Town of Lexington; and
- (c) Diligently pursue all necessary permits and approvals for the construction of a sidewalk along the southern side of Woburn Street from the Woburn town line to Peachtree Road. The sidewalk shall include the installation of granite curbing, ramps at the intersections of the driveways and Peachtree

Road and a crosswalk with flashing signals across Woburn Street in a location and manner that is acceptable to the Town of Lexington. The work will be completed to town standards and to the satisfaction of the Town of Lexington promptly after permits and approvals are issued, and Owner shall divide the work into manageable projects and complete such work as it is permitted and approved rather than waiting until all permits and approvals have been obtained. In the event that Owner cannot obtain all of the necessary permits and approvals for the construction of the sidewalk as described herein, Owner will meet with the Town of Lexington and provide substitute mitigation for such work in a form and manner that is acceptable to the Town of Lexington in its reasonable discretion. Owner hereby agrees to maintain and repair and remove snow and ice from the aforementioned sidewalk, at Owner's cost and expense, so that it remains in good condition consistent with the public sidewalks in Lexington.

***II. Measures to be Completed Upon the Issuance of a Certificate of Occupancy Enabling 75% Occupancy of the Manor House Property***

Prior to the issuance of a certificate of occupancy for the Manor House Property that enables 75% occupancy, Owner shall:

- (a) Contribute \$37,500 to the LEXPRESS transportation fund;
- (b) Contribute \$25,000 to the Town of Lexington for the beautification, maintenance and improvement of the park at the corner of Woburn and Lowell Streets; and
- (c) Contribute \$25,000 to the Town of Lexington to fund a transportation demand management study related to transportation in the area.

***III. Additional Provisions***

- (a) Consumer Price Index Adjustment.

Owner agrees that, beginning three (3) years from the date of the Attorney General approval of the vote of Annual Town Meeting on the Amended PSDUP (the "Initial CPI Adjustment Date"), the figures identified in Sections I and II above shall be adjusted annually for inflation or deflation based upon changes in the Consumer Price Index for all Urban Consumers, Boston-Brockton-Nashua, All Items (1982-1984 =100), published by the Bureau of Labor Statistics, U.S. Department of Labor ("CPI"); provided, however, that these figures shall never be reduced below the base sums herein. The first such adjustment shall be completed on the Initial CPI Adjustment Date based on changes in CPI for the preceding year. If the Bureau of Labor Statistics should cease to publish the CPI in its present form and calculated on the present basis, a comparable index or an index reflecting changes in prices determined in a similar manner shall reasonably

be designated by the Town in substitution therefor. The CPI for any year relevant to the application of this definition shall be that published by the Bureau of Labor Statistics for such year.

(b) Binding Effect.

This MOU shall be binding on and inure to the benefit of Owner and its successors and assigns as owners of the Manor House Property and shall run with the Manor House Property as an encumbrance thereto. This MOU shall inure to the benefit of successors and assigns of the Town. This MOU may be enforced by any remedy provided at law or in equity. This MOU and the Lexington Zoning Bylaws shall be construed in such a way as to harmonize any conflicting provisions to the greatest extent reasonably possible, but in the event of any irreconcilable conflict between this MOU and any provision in the Bylaws, the provisions of the Bylaws shall control (subject always to the provisions of General Laws, Chapter 40A, as amended). Owner shall record a notice of this MOU with the Middlesex South Registry of Deeds after approval of the Attorney General.

(c) Owner's Existence and Authority.

This MOU constitutes a valid and legally binding obligation of Owner, enforceable against Owner in accordance with its terms, and neither the execution, delivery or performance of this MOU nor compliance herewith conflicts with or will conflict with or results or will result in a breach of or constitutes or will constitute a default under (i) the trust documents of Owner, (ii) any law or any order, writ, injunction or decree of any court or governmental authority, or (iii) any agreement or instrument to which Owner is a party or by which it is bound.

(d) Cooperation.

Owner hereby agrees to continue to work cooperatively with the Town on an ongoing basis to implement both the specific provisions and the intent and purposes of this MOU.

(e) Time is of the Essence.

Time shall be of the essence of this MOU.

(f) Permitting.

The execution and delivery of this MOU does not constitute an agreement by the Town that any necessary permit or approval for Owner's project will in fact be granted. Any provision of this MOU may be incorporated into and made a condition of any permit or approval granted by the Town.

(g) Amendment of MOU.

This MOU may not be amended, modified or terminated except by a written instrument executed by Owner and by a majority of the Board of Selectmen.

(h) Enforcement; No Waiver.

The failure of the Town to enforce this MOU shall not be deemed a waiver of the Town's right to do so thereafter.

(i) Severability.

The invalidity of any provision of this MOU as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. If any provision of this MOU or its applicability to any person or circumstances shall be held invalid, the remainder thereof, or the application to other persons, shall not be affected.

(j) Applicable Law.

This MOU shall be governed by and according to the laws of the Commonwealth of Massachusetts, as amended from time to time. Any action brought by the Town hereunder may be brought in the Superior Court in and for the County of Middlesex, and Owner hereby agrees to the jurisdiction of such court.

Executed under seal as of the date first set forth above.

TOWN OF LEXINGTON  
BOARD OF SELECTMEN

\_\_\_\_\_  
Norman P. Cohen, Chairman

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George A. Burnell

\_\_\_\_\_  
Hank Manz

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Deborah N. Mauger

509 WOBURN STREET REALTY TRUST

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Peter C. J. Kelly, Trustee  
Hereunto duly authorized